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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

CHRISTOPHER WILLIAM WEDDELL,

Defendant and Appellant.

G051586

(Super. Ct. No. 05WF0750)

O P I N I O N

Appeal from a postjudgment order of the Superior Court of Orange County,
Thomas A. Glazier, Judge. Affirmed.

James R. Bostwick, Jr., under appointment by the Court of Appeal, for
Defendant and Appellant.

Kamala D. Harris, Attorney General, Gerald A. Engler, Chief Assistant
Attorney General, Julie L. Garland, Assistant Attorney General, Andrew Mestman and
Amanda E. Casillas, Deputy Attorneys General, for Plaintiff and Respondent.

* * *

INTRODUCTION

Defendant Christopher William Weddell appeals from the trial court's denial of his petition under Proposition 47, the Safe Neighborhoods and Schools Act (Pen. Code, § 1170.18), to have his felony conviction for unlawful taking of a vehicle redesignated as a misdemeanor. He contends that Proposition 47 requires that felony be redesignated as a misdemeanor because the vehicle involved had a value of \$950 or less. Alternatively, he argues that denying misdemeanor designation for that offense violates equal protection. Defendant's challenges fail because he has not established the value of the vehicle involved was \$950 or less. Therefore, we affirm the trial court's order.

STATEMENT OF FACTS AND PROCEDURAL HISTORY

On April 12, 2005, defendant pleaded guilty to felony taking and driving a motor vehicle without the owner's consent (Veh. Code, § 10851, subd. (a)), and being under the influence of a controlled substance, a misdemeanor (Health & Saf. Code, § 11550, subd. (a)). The felony complaint specified the vehicle that defendant took and drove was a 1992 Chevrolet Tahoe. Defendant's factual statement in support of his guilty plea reads: "I offer to the court the following facts as the basis for my plea of guilty to a felony: [¶] On or about 5/6/05 I unlawfully took a vehicle w/o owners consent & was under influence of controlled substance." The trial court placed defendant on formal probation for three years.

In November 2005, defendant admitted a probation violation, and the trial court revoked and reinstated his probation, and ordered him to serve 90 days in county jail. In February 2006, the court summarily revoked defendant's probation for another probation violation. In March 2006, the court reinstated and terminated defendant's probation, at which time the case was closed.

In November 2014, defendant filed a petition to have his conviction for violating Vehicle Code section 10851, subdivision (a), redesignated as a misdemeanor.

The district attorney objected, and the matter was set for a hearing. The trial court denied defendant's petition, and defendant filed a timely notice of appeal.

DISCUSSION

Defendant argues that he is entitled to relief under Proposition 47 because violations of Vehicle Code section 10851 are theft offenses.

"Proposition 47 reclassifies as misdemeanors certain non-serious, nonviolent crimes that previously were felonies, and authorizes trial courts to consider resentencing anyone who is currently serving a sentence for any of the listed offenses." (*People v. Awad* (2015) 238 Cal.App.4th 215, 218.) As is relevant to this case, Proposition 47 added Penal Code section 490.2, subdivision (a), which provides that all thefts where the value of the property taken is \$950 or less are petty thefts, and shall be punished as misdemeanors.

A violation of Vehicle Code section 10851, subdivision (a) is a "wobbler," which may be punished as a misdemeanor or as a felony. That statute was not amended by Proposition 47, or mentioned in the statutes added by Proposition 47.

However, Proposition 47 addressed the issue of theft-related offenses by adding Penal Code section 490.2, subdivision (a), which provides, in relevant part: "Notwithstanding [Penal Code s]ection 487 [defining grand theft] or any other provision of law defining grand theft, obtaining any property by theft where the value of the money, labor, real or personal property taken does not exceed nine hundred fifty dollars (\$950) shall be considered petty theft and shall be punished as a misdemeanor." Therefore, if the offense to which defendant pleaded guilty is a theft offense within the terms of Penal Code section 490.2, he would be entitled to seek relief under Proposition 47.

Defendant bears the burden of proof of his eligibility for resentencing under Proposition 47. (*People v. Sherow* (2015) 239 Cal.App.4th 875, 879.) There is nothing in the appellate record that shows the value of the vehicle defendant took was \$950 or

less. We affirm the denial of defendant's petition without prejudice to later consideration of a petition supported by evidence.

Defendant also argues that the equal protection clause requires that his conviction for unlawfully taking a vehicle (Veh. Code, § 10851) be treated the same as would convictions for theft of a vehicle (Pen. Code, § 487). "The concept of equal protection recognizes that persons who are similarly situated with respect to a law's legitimate purposes must be treated equally." (*People v. Brown* (2012) 54 Cal.4th 314, 328.) The parties disagree about whether those persons violating Vehicle Code section 10851 are similarly situated with those violating Penal Code section 487.

Even assuming the correctness of defendant's argument, he has failed to prove that he falls within the class of persons who are similarly situated. The felony complaint, defendant's guilty plea, and the evidence offered in support of the Proposition 47 petition fail to establish that the value of the vehicle at issue was \$950 or less. Because defendant has not shown the value of the vehicle was \$950 or less, he has not established he is within the class of persons otherwise entitled to relief under Proposition 47. Therefore, his equal protection claim fails on that ground alone.

DISPOSITION

The postjudgment order is affirmed.

FYBEL, J.

WE CONCUR:

ARONSON, ACTING P. J.

IKOLA, J.